



(916) 323-7711

August 31, 1981

Mr. M

Beneficial Interest of Surviving Spouse  
In "A-B" Trust Estate Plan

Dear Mr. M :

This letter is in response to your questions concerning a surviving spouse's beneficial interest in the property of the "B" trust in an "A-B" trust estate plan. The "A" trust is used to hold the assets which qualify for the marital deduction. The "B" trust is used to hold the balance of the assets. Your questions and our responses thereto are as follows:

(1) For the property which passes to the "B" Trust to qualify for the Section 63 interspousal exclusion, must the "B" Trust provide that the surviving spouse have a special power of appointment over those assets in addition to a life estate?

Response: No. It is only required that the surviving spouse be the sole present beneficiary of the life estate. It is not necessary that the surviving spouse have a special power of appointment over the trust assets in order to so qualify. If the surviving spouse is the sole present beneficiary, there will be no reappraisal upon the death of the first spouse. Upon the death of the second spouse, the property will be subject to reappraisal. Board Rule 462(i)(2)(D).

(2) Assuming a special power of appointment in the surviving spouse is not necessary for the property in the "B" trust to be considered for the beneficial use of the survivor, with regard to the life estate is it permissible for the trustee to have the discretion to distribute or accumulate income or must the trust provide that the income is required to be distributed annually?

Mr. M

August 31, 1981

Response: It is permissible for the trustee to have the discretion to distribute or accumulate income. There is no requirement that the income be distributed annually so long as the surviving spouse is the sole present beneficiary.

(3) Whether or not it is necessary to distribute the income annually, is it permissible for the trustee to have the power to sprinkle income among persons other than the surviving spouse and still have the property considered to be for the survivor's beneficial use?

Response: If the trustee has the power to sprinkle income among persons other than the surviving spouse, the surviving spouse is not the sole present beneficiary of the trust and such property cannot qualify for the interspousal exclusion. Board Rule 462(i)(2)(D).

For your information, I have enclosed an updated copy of Rule 462 as adopted by the Board of Equalization on May 5, 1981. If you have any further questions, please contact us.

Very truly yours,

Michele F. Hicks  
Tax Counsel

MFH:fr  
3548D  
Enclosure